IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.346 OF 2007

RAm Govind Mhapsekar ...Appellant

Versus

M.C.G.M. & Anr. ...Respondents

Shri J.G.Shukla i/by M/s.G.H.Shukla & Co for the Appellant.
Ms Geeta Jogalekar for the Respondent No.1.
Shri A.S.Khatib for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : MAY 04, 2007.

P.C.:

1. Heard learned Advocates appearing for the parties. The challenge in this Appeal From Order is to an order passed by the learned Judge of the City Civil Court, Mumbai by which Notice of Motion for temporary injunction filed by the Appellant has been dismissed. The challenge in the suit filed by the Appellant-Plaitniff was to an action under section 351 of the Mumbai Municipal Corporation Act, 1888 based on notice dated 05th April, 2005. The action is in respect of an unauthorised construction of ground plus first floor structure which is more particularly described in the notice dated 05th April, 2005.

2. After arguing the Appeal, the learned Advocate for the Appellant on instructions of the Appellant

states that the Appellant will unconditionally withdraw the suit filed by him in the trial Court and he may be granted liberty to apply for regularisation of the ground floor of the suit structure subject matter of the notice. He submits that the ground floor structure may be protected for a limited time to enable him to apply for regularisation.

3. I have heard the submissions of the learned Advocates appearing for the Respondents. Considering the fact that the Appellant is withdrawing the suit unconditionally and is claiming protection only in respect of the ground floor, the request made by the Appellant deserves to be accepted.

4. Hence, I pass the following order:

(i) Appeal From Order No.346 of 2007 and L.C. Suit No.63 of 2006 are dismissed as withdrawn.

(ii) If an Application is made by the Appellant for regularisation of the ground floor of the structure in dispute to the concerned authority of the first Respondent-Corporation within a period of six weeks from today, the same shall be decided by the concerned authority within a

period of eight weeks from the date of receipt of the said Application. The order passed on the Application for regularisation shall be communicated to the Appellant within a period of one week from the date of passing the order.

(iii) If Application for regularisation is made in respect of ground floor structure within the stipulated period of six weeks, for a period of twenty weeks from today, the first Respondent-Corporation will not take any action of demolition as regards the ground floor.

(iv) If the first floor of the structure is not demolished by the Appellant on his own within a period of four weeks from today, it will be open for the first Respondent-Corporation to remove the first floor.

(v) It is made clear that there is no protection has been granted to the first floor structure which is described in notice dated 05th April, 2005 and notwithstanding this order, it will be open for the first Respondent to demolish the said structure.

(vi) The trial Court will pass a formal order on the suit in terms of this order on receipt of the writ of this order.

(vii) There will be no orders as to costs.

(viii) Application for regularisation will be decided by the first Respondent on its own merits.

(ix) Parties to act upon an authenticated copy of this order.

JUDGE